

## TERMS OF AGREEMENT

**These Terms of Agreement set out the basis on which the Quality Improvement Programme (the Services) are offered.**

### 1. About us

- 1.1 **Our details.** The Royal College of Emergency Medicine (“We”). We are registered in England and Wales as a Registered Charity under Number: 1122689 and in Scotland under Registered Charity Number in Scotland: SC044373 and have our registered office at 7-9 Bream’s Buildings, Chancery Lane, London, EC4A 1DT. The Services under this Contract are provided by the Quality Team.
- 1.2 **Contacting us.** To contact us, please email [quality@rcem.ac.uk](mailto:quality@rcem.ac.uk) or telephone our customer service line on +44 (0) 20 7404 1999. How to give us formal notice of any matter under the Contract is set out in clause 15.2.
- 1.3 **Our regulator.** We are regulated by The Charity Commission (in England and Wales) and The Office of the Scottish Charity Regulator (In Scotland).

### 2. Our contract with you

- 2.1 **Our contract.** These terms and conditions (**Terms**) together with the terms and conditions set out on the Registration Form apply to the order by you and supply of the Quality Improvement Programme (QIP) Services by us to you (**Contract**). They apply to the exclusion of any other terms that you seek to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.
- 2.2 **Entire agreement.** The Contract is the entire agreement between you and us in relation to its subject matter. You acknowledge that you have not relied on any statement, promise or representation or assurance or warranty that is not set out in the Contract.
- 2.3 **Language.** These Terms and the Contract are made only in the English language.

### 3. Placing an order and its acceptance

- 3.1 **Placing your order.** Please follow the onscreen prompts to place your order. You may only submit an order using the method set out on the site. Each order by way of a Registration Form is an offer by you to buy the services specified in

the Registration Form (**Services**) subject to these Terms. The Services are more fully described here [Quality Improvement / RCEM](#).

- 3.2 **Correcting input errors.** Our order process allows you to check and amend any errors before submitting your order to us. Please check the order carefully before confirming it. You are responsible for ensuring that your order is complete and accurate.
- 3.3 **Accepting your order.** Our acceptance of your order takes place when we send an email to you to accept it (**Order Confirmation**), at which point and on which date (**Commencement Date**) the Contract between you and us will come into existence. The Contract will relate only to those Services confirmed in the Order Confirmation. We aim to process orders within 2 days of receiving your Registration Form.
- 3.4 **If we cannot accept your order.** If we are unable to supply you with the Services for any reason, we will inform you of this by email and we will not process your order. If you have already paid for the Services, we will refund you the full amount.

#### 4. **Cancelling your order**

- 4.1 If you cancel an Order for the Services following the Order Confirmation the fees due for the Services will still be payable.

#### 5. **Our services**

- 5.1 **Reasonable care and skill.** We warrant to you that the Services will be provided using reasonable care and skill.
- 5.2 **Time for performance.** We will use all reasonable endeavours to meet any performance dates specified in the Order Confirmation, but any such dates are estimates only and failure to perform the Services by such dates will not give you the right to terminate the Contract.
- 5.3 **Limitations on Services.** You acknowledge and accept that the quality of the Services (and the Quality Improvement Programme report produced) can be effected by:
- (a) Number of cases entered and submitted (submitting less than 5 cases per week); and
  - (b) Your staff's availability to provide information for each QIP.
- 5.4 **Excluded from the Services.** The Services do not include, and the Quality Team at Royal College of Emergency Medicine will not:

- (a) issue accounts to any individual that is not mentioned in the Registration Form or requested other than by individuals mentioned in the Registration Form;
- (b) provide bespoke data analysis reports on demand;
- (c) provide individual analysis or interpretation beyond the analysis in the local and national reports as published as part of the QIP services;
- (d) respond to clinical enquiries (the response to any clinical queries will be sent to the clinicians that have developed the QIP and answered at their discretion);
- (e) provide data entry extensions beyond any officially communicated extension period;
- (f) offer support to any of the projects that are outside of the QIP Study Period as set out in the details of the individual QIP as published here [Quality Improvement / RCEM](#);
- (g) send datasets or, local reports via email (you are required to download your reports via your portal login);
- (h) prescribe specific methods for data anonymisation; or
- (i) share your reports with any third parties (for example the Care Quality Commission)- if you wish to share the reports with such parties, this should be organised by your Trust.

## 6. Your obligations

6.1 It is your responsibility to ensure that:

- (a) the terms of your order are complete and accurate;
- (b) you cooperate with us in all matters relating to the Services;
- (c) you provide us with such information and materials we may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects; and
- (d) you obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start.

6.2 If our ability to perform the Services is prevented or delayed by any failure by you to fulfil any obligation listed in clause 6.1 (**Your Default**):

- (a) we will be entitled to suspend performance of the Services until you remedy Your Default, and to rely on Your Default to relieve us from the performance of the Services, in each case to the extent Your Default prevents or delays

performance of the Services. In certain circumstances Your Default may entitle us to terminate the Contract under clause 13 (Termination);

- (b) we will not be responsible for any costs or losses you sustain or incur arising directly or indirectly from our failure or delay to perform the Services; and
- (c) it will be your responsibility to reimburse us on written demand for any costs or losses we sustain or incur arising directly or indirectly from Your Default.

## 7. Charges

- 7.1 In consideration of us providing the Services you must pay our charges (**Charges**) in accordance with this clause 7.
- 7.2 The Charges are the prices quoted on the Registration Form at the time you submit your order.
- 7.3 If you wish to change the scope of the Services after we accept your order, and we agree to such change, we will modify the Charges accordingly.
- 7.4 Our Charges are exclusive of VAT. Where VAT is payable in respect of some or all of the Services you must pay us such additional amounts in respect of VAT, at the applicable rate, at the same time as you pay the Charges.
- 7.5 It is always possible that, despite our reasonable efforts, some of the Services on our site may be incorrectly priced. Where the correct price for the Services is less than the price stated on our site, we will charge the lower amount and if the correct price for the Services is higher than the price stated on our site, we will contact you as soon as possible to inform you of this error and we will give you the option of continuing to purchase the Services at the correct price or cancelling your order. We will not process your order until we have your instructions.

## 8. How to pay

- 8.1 We will send you an electronic invoice on Order Confirmation.
- 8.2 The invoice is due for settlement within 30 days of issue.
- 8.3 If you fail to make a payment under the Contract by the due date, then, without limiting our remedies under clause 13 (Termination), you will have to pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 8.2 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.

8.4 You shall each pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

## **9. Intellectual property rights**

9.1 All intellectual property rights in or arising out of or in connection with the Services (other than intellectual property rights in any materials provided by you) will be owned by us.

9.2 We agree to grant you a fully paid-up, worldwide, non-exclusive, royalty-free perpetual and irrevocable licence to copy the deliverables specified in your order (excluding materials provided you) for the purpose of receiving and using the Services and such deliverables in your business. You may sub-license, assign or otherwise transfer the rights granted in this clause 9.2. Once the QIP report is issued to you, you are free to share this with any third party who you wish.

9.3 You agree to grant us a fully paid-up, non-exclusive, royalty-free, transferable licence to copy and modify any materials provided by you to us for the purpose of providing the Services to you and for any for the production of national reports. We own all intellectual property in the site local and national reports produced.

## **10. How we may use your personal information**

10.1 We will use any personal information you provide to us to:

- (a) provide the Services;
- (b) process your payment for the Services; and
- (c) inform you about similar products or services that we provide, but you may stop receiving these at any time by contacting us.

10.2 We will process your personal information in accordance with our Privacy Policy (available on our website), the terms of which are incorporated into this Contract.

## **11. Limitation of liability: YOUR ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.**

11.1 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:

- (a) death or personal injury caused by negligence;
- (b) fraud or fraudulent misrepresentation; and

- (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 11.2 Subject to clause 11.1, we will not be liable to you, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract for:
- (a) loss of profits;
  - (b) loss of sales or business;
  - (c) loss of agreements or contracts;
  - (d) loss of anticipated savings;
  - (e) loss of use or corruption of software, data or information;
  - (f) loss of or damage to goodwill; and
  - (g) any indirect or consequential loss.
- 11.3 Subject to clause 11.1, our total liability to you arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, will be limited 120% of the total Charges paid under the Contract.

## **12. Confidentiality**

- 12.1 We each undertake that we will not disclose to any person any confidential information concerning one another's business, affairs, customers, clients or suppliers, except as permitted by clause 12.2.
- 12.2 We each may disclose the other's confidential information:
- (a) to such of our respective employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of exercising our respective rights or carrying out our respective obligations under the Contract. We will each ensure that such employees, officers, representatives, subcontractors or advisers comply with this clause 12; and
  - (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 12.3 Each of us may only use the other's confidential information for the purpose of fulfilling our respective obligations under the Contract and as permitted by this Contract.

### 13. Termination, consequences of termination and survival

- 13.1 **Termination.** Without limiting any of our other rights, we may suspend the performance of the Services, or terminate the Contract with immediate effect by giving written notice to you if:
- (a) you commit a material breach of any term of the Contract and (if such a breach is remediable) fail to remedy that breach within 5 days of you being notified in writing to do so; or
  - (b) you fail to pay any amount due under the Contract on the due date for payment.
- 13.2 Termination of the Contract will not affect your or our rights and remedies that have accrued as at termination.
- 13.3 **Survival.** Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination will remain in full force and effect.

### 14. Events outside our control

- 14.1 We will not be liable or responsible for any failure to perform, or delay in performance of, any of our obligations under the Contract that is caused by any act or event beyond our reasonable control (**Event Outside Our Control**).
- 14.2 If an Event Outside Our Control takes place that affects the performance of our obligations under the Contract:
- (a) we will contact you as soon as reasonably possible to notify you; and
  - (b) our obligations under the Contract will be suspended and the time for performance of our obligations will be extended for the duration of the Event Outside Our Control. We will arrange a new date for performance of the Services with you after the Event Outside Our Control is over.

### 15. Communications between us

- 15.1 When we refer to "in writing" in these Terms, this includes email.
- 15.2 Any notice or other communication given by one of us to the other under or in connection with the Contract must be in writing and be delivered personally, sent by pre-paid first class post or other next working day delivery service, or email.
- 15.3 A notice or other communication is deemed to have been received:
- (a) if delivered personally, on signature of a delivery receipt [or at the time the notice is left at the proper address;

- (b) if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second working day after posting; or
  - (c) if sent by email, at 9.00 am the next working day after transmission.
- 15.4 In proving the service of any notice, it will be sufficient to prove, in the case of a letter, that such letter was properly addressed, stamped and placed in the post and, in the case of an email, that such email was sent to the specified email address of the addressee.
- 15.5 The provisions of this clause will not apply to the service of any proceedings or other documents in any legal action.

## 16. General

### 16.1 Assignment and transfer

- (a) We may assign or transfer our rights and obligations under the Contract to another entity but will always notify you in writing if this happens.
- (b) You may only assign or transfer your rights or your obligations under the Contract to another person if we agree in writing.

16.2 **Variation.** Any variation of the Contract only has effect if it is in writing and signed by you and us (or our respective authorised representatives).

16.3 **Waiver.** If we do not insist that you perform any of your obligations under the Contract, or if we do not enforce our rights against you, or if we delay in doing so, that will not mean that we have waived our rights against you or that you do not have to comply with those obligations. If we do waive any rights, we will only do so in writing, and that will not mean that we will automatically waive any right related to any later default by you.

16.4 **Severance.** Each paragraph of these Terms operates separately. If any court or relevant authority decides that any of them is unlawful or unenforceable, the remaining paragraphs will remain in full force and effect.

16.5 **Third party rights.** The Contract is between you and us. No other person has any rights to enforce any of its terms.

16.6 **Governing law and jurisdiction.** The Contract is governed by English law and we each irrevocably agree to submit all disputes arising out of or in connection with the Contract to the exclusive jurisdiction of the English courts.